Public Prosecutor v Jumaat Mohd Yusuff bin Abdul Bashar

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–118 OF 2006
KN SEGARA J
6 JULY 2007

Evidence — Conflicting testimony — Witnesses contradicted on material points — Oral evidence of crucial witness materially contradicted by other evidence — Whether trial judge was correct in assessment of evidence

Evidence — Witness — Credibility — Conduct outside court — Whether communication by other witnesses with witness before testimony amounted to unprofessional conduct and bias

The accused was charged for an offence under s 39B(1) Dangerous Drugs Act 1952 for trafficking in 8,886g of cannabis. The case for the prosecution commenced with the evidence of the wife of the accused SP1. SP1 testified that at the material time she heard her apartment door being knocked several times. When she opened the door, she was shocked to see her husband together with the police. She also testified that the day before the police came to her apartment, a friend of her husband had come to her apartment and stayed overnight. The prosecution did not at all suggest to SP1 that at the time of the arrest SP1 and her children were not in the apartment. The prosecution also did not dispute her testimony that the said friend of her husband stayed overnight. No application was made to treat SP1 as a hostile witness or impeach her credit. The main police witness SP3 testified that there was no one in the apartment when he entered together with four other police personnel.

Held, acquitting and discharging the accused without calling for defence:

(1) SP1's evidence was unequivocally accepted by the prosecution and formed the backbone, crucial towards establishing a prima facie case against the accused, in the event there was any discovery by the police of any drugs in the apartment. Any evidence introduced, thereafter, materially contradicting the evidence of SP1, must without doubt, cause the prosecution's case to crumble, and give rise to serious doubts on the credibility of the witnesses, upon whose evidence a prima facie against the accused is relied upon to be made out, subsequently (see para 10).

(2) SP3's oral testimony that the accused took out a black plastic package from under the bedstead and handed over to him was in stark contrast and material contradiction to what he had recorded in writing, by way of remarks, in respect of the black package he seized in the apartment, when handing over the exhibits to SP11, in exh P6, and also in the search list, exh P21, prepared by

him. The irresistible inference is that SP3 in fact discovered it upon information given to him by the accused in the course of interrogations after his arrest in Kg Baru and, the subsequent search of the apartment that morning with the accused. Such discovery by SP3 was not evidence of mens rea possession of the drugs inside the black plastic package. Such discovery was also not evidence of custody and control of the black plastic package. The only inference of such discovery was that the accused had knowledge of the presence of the black plastic package in the room of the apartment belonging to his wife, used by his friend Tengku Hassan (SP4) (see para 15).

(3) Even if the accused had knowledge that drugs were concealed in the black plastic package and left under the bedstead by his friend, Tengku Hassan, such knowledge is not sufficient to fasten possession of the drugs on the accused, let alone be proof of trafficking by the accused (see para 15).

(4) SP3's testimony that there was no one else in the apartment when he entered the apartment is a blatant lie, in the face of the testimony of SP1. All evidence by police personnel that there were no one in the apartment, at the time the alleged drugs were recovered from under the bedstead in the room, used as a store by SP1, must be rejected without hesitation, upon taking into consideration the undisputed testimony of SP1 that she was in the apartment with her children when the police party led by SP3 came to her apartment (see para 16).

(5) The communication with SP4 outside the courtroom by SP3 and SP11, with reference to the evidence of SP1, is unconscionable and must be condemned as unprofessional. Such personal interest shown is a clear manifestation of bias and determination to obtain a conviction against the accused (see para 26).

(6) At the close of the case for the prosecution, the evidence adduced completely failed to establish a prima facie case against the accused, as charged. The prosecution has failed to establish that the black plastic package found under the bedstead in the store room was in the custody and control of the accused. The room was never locked. There was no evidence when the black plastic package was placed under the bedstead and who had placed it there. There was no incriminating evidence within the black plastic package to associate the package with the accused, for example, some distinctly identifiable personal item or document of the accused. The room was accessible to SP3 and her children, as well as to Tengku Hassan (SP4) and the accused (see para 27).

[Bahasa Malaysia summary

Tertuduh telah dituduh untuk kesalahan di bawah s 39B(1) Akta Dadah Berbahaya 1952 kerana mengedar 8,886g kanabis. Kes untuk pihak pendakwaan bermula dengan keterangan isteri tertuduh SP1. SP1 memberi keterangan bahawa pada masa matan beliau mendengar pintu apartmennya diketuk beberapa kali. Apabila beliau membuka pintu, beliau terperanjat melihat suaminya bersama polis. Beliau juga memberi keterangan bahawa sehari sebelum polis datang ke apartmennya, seorang rakan suaminya telah datang ke apartmen dan tinggal semalam di situ. Pihak pendakwaan tidak langsung mencadangkan kepada SP1 bahawa pada masa

A tangkapan SP1 dan anak-anaknya tiada di apartmen itu, Pihak pendakwaan juga tidak mempertikaikan testimoninya bahawa rakan suaminya telah bermalam di situ. Tiada permohonan dibuat untuk menganggap SP1 sebagai saksi yang menentang atau mencabar kebolehpercayaannya. Saksi utama polis SP3 telah memberi keteranganbahawa tiada sesiapa dalam apartmen itu semasa beliau masuk bersama
B empat pegawai polis lain.

Diputuskan, melepas dan membebaskan tertuduh tanpa memanggil untuk pembelaan:

C

(1) Keterangan SP1 yang tidak taksa telah diterima oleh pihak pendakwaan dan membentuk tulang belakang kes, penting untuk membuktikan kes prima facie terhadap tertuduh, sekiranya terdapat apa-apa penemuan dadah oleh polis di apartmen tersebut. Apa-apa keterangan yang dikemukakan selepas itu, yang secara material bercanggah dengan keterangan SP1, hendaklah tanpa sebarang
D keraguan, menyebabkan kes pihak pendakwaan gagal, dan menimbulkan keraguan serious terhadap kebolehpercayaan saksi-saksi, yang mana keterangan mereka secara prima facie membentuk kes terhadap tertuduh akhirnya (lihat perenggan 10).

E (2) Testimoni lisan SP3 bahawa tertuduh mengeluarkan bungkusan plastik hitam dari bawah katil dan menyerahkan kepadanya amat berbeza dan bercanggah dengan apa yang beliau telah rekod secara bertulis, melalui kata-kata, berkaitan bungkusan hitam yang beliau rampas dalam aprtmen itu, semasa menyerahkan ekshibit-ekshibit tersebut kepada SP11, dalam eksh P6, dan juga dalam senarai geledahan, eksh P21, yang telah disediakan olehnya. Inferens yang tidak dapat
F dibendung adalah bahawa SP3 sememangnya menjumpai berdasarkan maklumat yang diberikan kepadanya oleh tertuduh sewaktu soal siasat selepas tangkapannya di Kg Baru dan, geledahan berikutnya di apartmen tersebut pada pagi itu dengan tertuduh. Penemuan sedemikian oleh SP3 bukan bukti mens rea pemilikan dadah dalam bungkusan plastik hitam itu, Penemuan
G sebegini juga bukan bukti terdapat jagaan dan kawalan bungkusan plastik hitam itu, Satu-satunya inferens terhadap penemuan tersebut adalah bahawa tertuduh mempunyai pengetahuan tentang kewujudan bungkusan plastik hitam dalam bilik apartmen milik isterinya, yang digunakan oleh rakannya Tengku Hassan (SP4) (lihat perenggan 15).

H (3) Jikapun tertuduh mempunyai pengetahuan bahawa dadah tersebut disembunyikan dalam bungkusan plastik hitam dan diletakkan di bawah katil oleh rakannya, Tengku Hassan, pengetahuan sedemikian tidak memadai untuk menganggap wujud milikan dadah terhadap tertuduh, apatah lagi untuk membuktikan pengedaran oleh tertuduh (lihat perenggan 15).

I (4) Testimoni SP3 bahawa tiada orang lain dalam apartmen itu semasa beliau masuk ke dalam apartmen tersebut adalah tipu semata-mata, jika berdasarkan testimoni SP1. Kesemua keterangan oleh pegawai polis bahawa tiada sesiapa dalam apartmen itu, semasa dadah yang dikatakan itu dijumpai dari bawah katil dalam bilik itu, yang digunakan sebagai stor oleh SP1, hendaklah ditolak tanpa keraguan, setelah mengambilkira testimoni SP1 yang tidak dipertikaikan

bahawa beliau berada dalam apartmen itu bersama anak-anaknya semasa pasukan polis yang diketuai oleh SP3 datang ke apartmennya (lihat perenggan 16).

(5) Komunikasi dengan SP4 di luar bilik mahakmah oleh SP3 dan SP11 dengan merujuk kepada keterangan SP1 adalah tidak wajar dan harus ditegah kerana dianggap tidak profesional. Kepentingan peribadi sebegini ditunjukkan merupakan penyataan berat sebelah yang jelas dan kesungguhan untuk mendapatkan sabitan terhadap tertuduh (liaht perenggan 26).

(6) Di penutup kes pihak pendakwaan, keterangan yang dikemukakan gagal membuktikan satu kes prima facie terhadap tertuduh seperti yang disabitkan. Pihak pendakwaan gagal membuktikan bahawa bungkusan plastik hitam yang dijumpai di bawaha katik dalam bilik stor adalah dalam jagaan dan kawalan tertuduh. Bilik tersebut tidak pernah berkunci. Tiada keterangan bila bungkusan plasitk hitam itu diletakkan di bawah katil tersebut dan siapa yang meletakkannya di situ. Tiada keterangan untuk menunjukkan bungkusan plastik hitam itu dapat dikaitkan dengan tertuduh, contohnya, item peribadi atau dokumen yang boleh dikenalpasti milik tertuduh seorang sahaja. Bilik itu boleh dimasuki oleh SP3 dan anak-anaknya, dan juga Tengku Hassan (SP4) dan tertuduh (lihat perenggan 27).]

Notes

For cases on witnesses contradicted on material points, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 835–836.

For cases on credibility of witnesses, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2673–2705.

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(3), 39B(1)

Azar Irwan bin Moh Ariffin (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Gurbachan Singh (Bachan & Kartar) for the accused.

KN Segara J (now JCA)::

[1] The accused, Jumaat Mohd Yusuff bin Abdul Bashar was charged for an offence under s 39B(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, that is, for trafficking in 8,886g of cannabis on 4 May 2006, at about 5.30am, at house No Al-2-05 Desa Putra (Blok Meranti), Taman Batu Caves, Batu Caves, Gombak, Selangor ('apartment').

[2] The case for the prosecution unfolds with the evidence of the wife of the accused. The apartment belongs to the wife of the accused, Zaleha bte Abdul Rahman (SP1). She is a clerk, attached to the KWSP. She bought the apartment on 24 April 2001. Since May 2005, she has been living in the apartment, together with the accused and her two children, now aged 10 years and 7 years.

[3] The apartment has three rooms. The first room, in the front portion of the apartment, is used as a store. The second room, is used as the children's room and third room, is used as the master bedroom by SP1 and the accused.

[4] Photographs P3(A-K) show the various parts of the apartment. P3H and I are photographs of the room used as a store. There is a spare bedstead, with a mattress, in the store. The store is not locked.

[5] The accused carries on business in Kg Baru. The accused sends his wife to work in the mornings and also fetches her back from work daily in the evening. SP1 usually leaves for work at about 6.45am and returns at about 7pm. There are two sets of keys to the apartment. SP1 and the accused each have a set of key to the apartment. He also sends his children to school and then normally, goes to work in Kg Baru. The accused has a motorcar, WHU 5226.

[6] SP1 testified that on 4 May 2006, at about 5am, she heard her apartment (door) being knocked several times, and then the voice of her husband calling for her. She then went and opened the front door and grille of the apartment and was shocked to see her husband together with the police. The police directed her to go into the living area of the apartment and sit on the sofa. She was in a state of shock and was not sure what was happening. She did not know why the accused came to the apartment with the police at 5am. She said she did not keep any drugs in the apartment:

> (Pada 4 Mei 2006 jam lebihkurang 5.00 pagi rumah saya diketuk berkali-kali. Lepas itu soya dengar suara OKT memanggil saya. Lepas itu saya terus membuka pintu masuk hadapan dan gril. Saya terperanjat tengok suami (OKT) saya dan polis.
>
> Saya diarahkan oleh pihak polis untuk masuk ke ruang tamu dan diarah untuk duduk di atas sofa. Saya dalam keadaan terkejut dan tidak pasti apa yang berlaku.
>
> Saya tidak tahu sama ada pihak polis berjumpa apa-apa barang salah di apartment saya.
>
> Saya tidak tahu kenapa OKT datang ke apartment bersama-sama pihak polis jam 5.00 pagi tersebut.
>
> Saya tidak simpan apa-apa dadah di dalam apartment saya.)

[7] Under cross-examination, SP1 testified that on 4 May 2006 she was also arrested, together with her children, and taken to Balai Polis, IPK Kuala Lumpur. She was detained at the police station, together with her children, till 12.30pm.

[8] She also testified, under cross-examination, that on 3 May 2006 Tengku Hassan, a friend of her husband, had come to her apartment at about 7pm, and stayed overnight at her apartment. She testified that even before 3 May 2006 Tengku Hassan had come and stayed overnight, at the apartment. She also testified that whenever Tengku Hassan comes to the apartment, he uses the bed seen in photographs P3I and J, that is, the spare bed in the store room. She testified, that on the morning of 3 May 2006 she went to work, and at that time Tengku Hassan was still in the apartment. He had come to the apartment on 2 May 2006 at 7pm:

(Pada 4 Mei 2006 saya dan anak-anak saya juga ditangkap oleh pihak polis dan dibawa ke Balai Polis IPK, Kuala Lumpur. Saya dan anak-anak saya ditahan di situ sehingga jam12.30 tengahari.

Pada 3 Mei 2006 Tengku Hassan ada datang ke apartment say \a jam lebih kurang 7.00 malam. Pada hari itu dia ada bermalam di apartment saya. Tengku Hassan ialah kawan suami saya.

Sebelum 3 Mei 2006 Tengku Hassan ada sekali sekala datang dan bermalam di apartment saya.

[ID3I dan J dirujuk kepada saksi]

Setuju bila Tengku Hassan datang ke apartment saya beliau menggunakan katil yang ada nampak dalam gambar-gambar ini.

Setuju pada 3 Mei 2006, Tengku Hassan ada menggunakan katil tersebut bila dia bermalam di apartment saya.

...

Pada pagi 3 Mei 2006 saya ada pergi kerja. Pada pagi 3 Mei 2006 sewaktu saya pergi kerja, Tengku Hassan masih berada di rumah saya. Tengku Hassan datang ke rumah saya pada 2 Mei 2006 jam 7.00 petang.)

[9] Under re-examination SPl testified that Tengku Hassan left the apartment on 3 May 2006 at about 6.45am when she left for work with her husband. He left on a motorcycle:

(Tengku Hassan keluar dari apartment saya pada 3 Mei 2006 jam lebih kurang 6.45 pagi sewaktu saya pergi kerja bersama-sama suami saya. Dia keluar naik motor).

[10] The learned DPP did not at all suggest to SP1, that on the morning of 4/5/06, she and her two children were not in the apartment at all, when the police arrived at 5.30am together with her husband. No evidence was adduced from SP1 by the learned DPP, either in examination-in-chief or re-examination, that she and her children were never arrested on the morning of 4/5/06 by the police when they went to her apartment with her husband. The learned DPP did not dispute her testimony adduced in cross-examination that Tengku Hassan is a friend of her husband and has stayed overnight in her apartment and sleeps on the spare bed found in the store room, whenever he comes to the apartment. Her testimony that the store room is never locked was never challenged. No application was made by the learned DPP to treat SP1 as a hostile witness or impeach her credit. Therefore, her evidence was unequivocally accepted by the prosecution and formed the backbone, crucial towards establishing a prima facie case against the accused, in the event there was any discovery by the police of any drug in the apartment. Any evidence introduced, thereafter, materially contradicting the evidence of SP1, must, without doubt, cause the prosecution's case to crumble, and give rise to serious doubts on the credibility of the witnesses, upon whose evidence a prima facie against the accused is relied upon to be made out, subsequently.

[11] After SP1 had testified, the main police witness was C/I Zulkefli bin Kamis (SP3).

[12] SP3 is attached to the Jabatan Siasatan Jenayah (Narkotik), IPK Kuala Lumpur, as Pegawai Operasi Narkotik. At about 1am, on 4 May 2006, he arrested the accused in Kg Baru, Kuala Lumpur, as a suspect for some drug offence. Upon his arrest SP3 did not find anything incriminating on him. SP3 then took the accused to a car, in Kg. Baru, suspected to have been used by the accused. SP3 examined the car at about 1.15am and alleged that he found some drugs in the car. He made a police report.

[13] On 4 May 2006 SP3 interrogated the accused from 2am till about 5am at the Jabatan Siasatan Jenayah (Narkotik), IPK Kuala Lumpur. Based on information given by the accused, SP3, together with a party of police personnel, went to the apartment at about 5.30am. When he arrived at the apartment, the door of the apartment was locked. He opened the door with the key seized from the accused and entered the apartment with four other police personnel.

[14] SP3 testified that there was no one in the apartment when he entered. He testified that the accused took him to the room at the front portion of the apartment and, from under the bedstead in that room, the accused pulled out a black plastic package and handed it to him. SP3 took the package to the living area of the apartment and opened it. Inside it were six compact packages, wrapped in clear plastic and white paper, suspected to contain cannabis. There was also another black plastic package within the first black plastic package. Inside this second black plastic package there were three compacted material, suspected to be cannabis, wrapped in clear plastic and aluminum foil. SP3 seized the packages, lodged a police report and handed over the packages to the investigating officer, Inspector Nor Resah (SP11), on 5 May 2006 at 4pm.

[15] SP3's oral testimony that the accused took out a black plastic package from under the bedstead and handed over to him [Kemudian OKT mengambil satu bungkusan plastic hitam dari bawah katil bilik tersebut dan serahkan kepada saya.) is in stark contrast and material contradiction to what he has recorded in writing, by way of remarks, in respect of the black plastic package he seized in the apartment, when handing over the exhibits to SP11, in exh P6, and also in the search list, exh P21, prepared by him. The written remarks on P6 reads: 'Dijumpai di bawah katil dalam bilik bahagian hadapan dalam rumah'. In P21 under the heading 'DI MANA DIJUMPAI DAN OLEH SIAPA' it is recorded 'Dijumpai dibawah katil dalam bilik bahagian hadapan dalam rumah oleh Inspector Zulkepli'. Therefore, the accused did not in fact take the package and hand it over to SP3, as testified in court. The irresistible inference is that SP3 in fact discovered it upon information given to him by the accused in the course of interrogations after his arrest in Kg Baru and, the subsequent search of the apartment that morning with the accused. Such discovery by SP3 is not evidence of mens rea possession of the drugs inside the black plastic package. Such discovery is also not evidence of custody and control of the black plastic package. The only inference of such discovery is that the accused had knowledge of the presence of the black plastic package in the room of the apartment belonging to his wife, used by his friend Tengku Hassan (SP4). Even if the accused had knowledge that drug was concealed in the black plastic package and left under

the bedstead by his friend, Tengku Hassan, such knowledge is not sufficient to fasten possession of the drugs on the accused, let alone be proof of trafficking by the accused.

[16] SP3's testimony that there was no one else in the apartment when he entered the apartment is a blatant lie, in the face of the testimony of.SP1. All evidence by police personnel that there were no one in the apartment, at the time the alleged drugs was recovered from under the bedstead in the room, used as a store by SP1, must be rejected without hesitation, upon taking into consideration the undisputed testimony of SP1 that she was in the apartment with her children when the police party led by SP3 came to her apartment, at 5.30am on 4 May 2006.

[17] There was no evidence that SP1 and her children were living with her father-in-law (SP10) in his house at Batu 5, Jalan Ipoh, Kuala Lumpur on 3 May 2006 and 4 May 2006. No statement was recorded from SP10, that on the 3 May 2006 and 4 May 2006 SP1 and her children lived with him, to warrant the Court impeaching his credit. The impeachment proceeding was a futile exercise by the prosecution.

[18] Abdul Bashar bin Hassan (SP10), is the father of the accused. SP1 is his daughter in law. He testified that the accused lives in Taman Batu Caves with his wife (SP1) and children. He testified that only two of his children live with him, that is, Monila and Siti Khadijah. He testified that the police told him to admit that Zaleha was in his house on the day accused was arrested. (Hanya pihak polis menyuruh saya mengaku bahawa Zaleha berada di rumah saya pada hari OKT ditangkap. Selepas pihak polis membuat surat keterangan, dia menyuruh saya tandatangan.)

[19] When cross-examined, SP10 testified, that on the day the accused was arrested, Zaleha lived in her house at Taman Batu Caves. He also testified that it was Inspector Nor Resah (SP11, the investigating officer) who told him to admit that Zaleha lived in his house. He testified that when he was discussing with Inspector Nor Resah, he told her that Zaleha lived in her own house in Taman Batu Caves. He further testified that Inspector Nor Resah told him, that if he did not admit that Zaleha did not live with him, Zaleha would be arrested and charged. He testified he did not know what Inspector Nor Resah typed. After that he was asked to sign. (Pada hari OKT ditangkap, Zaleha juga tinggal di rumahnya di Taman Batu Caves. Inspector Nor Resah yang menyuruh saya mengaku bahawa Zaleha tinggal di rumah saya. Saya ada bagitahu Inspector Nor Resah semasa perbincangan bahawa sebenarnya Zaleha tinggal di rumahnya di Taman Batu Caves. Inspector Nor Resah ada memberitahu saya, jika saya tidak mengaku Zaleha tinggal bersama saya, Zaleha akan ditangkap dan dituduh. Saya tidak tahu apa Inspector Nor Resah menaip. Selepas itu dia suruh saya tandatangan.)

[20] SP10's evidence under cross-examination was not challenged at all, as there was no re-examination by the learned DPP.

[21] SP11 (Inspector Nor Resah), the investigating officer, in an attempt to discredit SP1 and SP10 in order to give credence to the evidence of police personnel

in this case (particularly SP3 and SP 9 that SP1 was not living in the apartment at the time the apartment was searched and the drugs seized on the morning of 4 May 2006) testified that the wife of the accused told her that she had just arrived at the apartment from her father-in law's house, when she met her at the apartment on 6 May 2006 at 1.50pm. [Pada 6 May 06 jam 1.50 petang, saya pergi ke tempat kejadian bersama jurugambar dan pengadu iaitu Inspector Zulkefli bin Kamis. Semasa sampai di tempat kejadian saya dapati isteri saspek berada di rumah dan beliau memberitahu say a beliau baru sampai ke rumah tersebut dari rumah bapa mertuanya. Isteri saspek bernama Zaleha.)

[22] Notwithstanding SP11's denial, that she had told SP1 and her father in law (SP10) to lie she was staying in her father in law's house on the date of the incident, the evidence on record of SP1 and SPIO, speaks for itself. There is a complete ring of truth to the testimony of SP1 and SP10.

[23] The police have a vested interest to obtain a conviction in respect of the discovery of the drugs in the apartment. SP3 and SP10 appear bent on making the accused the fall guy after having successfully secured a restriction order against Tengku Hassan for his drug trafficking activities in the Kg Baru area (see exh D20).

[24] Tengku Mohd Hassan bin Tengku Hashim (SP4) testified that he had known the accused for more than three years. He came to know the accused because the accused always comes to eat at his family stall in Medan Selera TPCA, Hospital Kuala Lumpur. He denied that he knew where the accused lived. He denied that he knew the accused's wife (SP1) or that he had ever stayed overnight at SPl's apartment.

[25] SP4 testified that on 3 May 2006 he was arrested by the police at about 8pm at Jalan Hamzah, Kg Baru, because police found drugs in an old pondok at Jalan Hamzah. Under cross-examination, he testified it was C/I Zulkefli (SP3) who arrested him on 4 May 2006, in Kg. Baru, near an old pondok and, he was then taken to IPK Kuala Lumpur.

[26] SP4, is without doubt, a witness brought to court at the behest of the police to ensure that the prosecution will be able to rebut the evidence of SPl concerning his stay at the apartment. He testified under cross-examination that he had never received any subpoena to attend court to testify in this case. His residence has been restricted to Seremban since 19 July 2006 pursuant to the restriction order (exh D20) made by the Minister under to s 6(3) of the Dangerous Drugs (Special Preventive Measures) Act 1985. He said he had been informed that IPD Gombak had requested IPD Seremban to instruct him to attend court at 10am. He said he had not made any application to the Ketua Polis Negeri Sembilan to leave the district of Seremban (to attend court in Shah Alam Selangor). He testified he arrived in Court at about 12 noon with his brother and met Inspector Nor Resah (SP11) and C/I Zulkekli (SP3). He testified that they requested him to give evidence and, told him his name had surfaced yesterday (18 June 2007). He testified that, at first it was the lady inspector (SP11) who told him that his name had been mentioned in court and, then, it was Inspector Zulkeli (SP3).who told him, as well. All this took place outside the Court. How did SP11, who had not given evidence know that SP4's name had

been mentioned by any of the witnesses? Why the dogged interest by SP3 and SP11 to inform SP4, immediately before he took the stand, that his name had been mentioned in court, the previous day? Such personal interest shown by the complainant in this case (SP3) [the police officer who discovered the drugs] and SP11 (the investigating officer) is a clear manifestation of bias and determination to obtain a conviction against the accused. The communication with SP4 outside the court-room by SP3 and SP11, with reference to the evidence of SP1, is unconscionable and must be condemned as unprofessional. This was not a case of SP11 merely asking SP4 to read his statement made to the police, in order to refresh his memory outside the court room, before he testified in court. In the circumstances, the testimony of SP4 that he neither knows SP1 nor has he ever been to the apartment and stayed overnight is totally rejected. SP4 is a drug trafficker (as clearly manifested in the restriction order, exh D20) and the irresistible inference is that he would most certainly do anything (including lying through his teeth when testifying in court) in order to avoid incurring the displeasure of the police and escape facing a charge that would result in his doom, in the light of his drug trafficking activities.

[27] At the close of the case for the prosecution, the evidence adduced completely failed to establish a prima facie case against the accused, as charged. The prosecution has failed to establish that the black plastic package found under the bedstead in the store room was in the custody and control of the accused. The room was never locked. There was no evidence when the black plastic package was placed under the bedstead and who had placed it there. There was no incriminating evidence within the black plastic package to associate the package with the accused, for example, some distinctly identifiable personal item or document of the accused. The room was accessible to SP3 and her children, as well as to Tengku Hassan (SP4) and the accused. In the above circumstances, the accused is acquitted and discharged without his defence being called.

Accused acquitted and discharged without being called for defence.

Reported by Brendan Navin Siva